

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAROLYN E. PIERSAWL as Personal
Representative of the Estate of
WILLIAM T. PIERSAWL,

Plaintiff,

v.

UNITED STATES OF AMERICA; and
UNKNOWN JOHN DOES AND JOHN
DOE CLINICS,

Defendants.

CAUSE NO.

COMPLAINT FOR MEDICAL
NEGLIGENCE

I. PARTIES

1.1 Carolyn Piersawl is the wife of William Piersawl and the Personal Representative of the Estate of William Piersawl. At all times material hereto, plaintiff's resided in Lynwood, Snohomish County, Washington.

1.2 Defendant United States of America is named on the basis of the determination pursuant to 28 U.S.C. Sec. 2671 that VA Puget Sound Health Care System and its physicians, employees, and agents are employees and agents of the Government.

1 1.3 Plaintiff alleges that there may be other health care providers, persons,
2 or entities whose negligence contributed to Plaintiff's injuries and damages, but whose
3 identity is not now known and who are referred to herein as Unknown John Does.
4 Plaintiffs request that these pleadings be amended to reflect the true identities of these
5 Defendants if and when they are identified.
6

7 1.4 Plaintiff alleges that there may be other Clinics, Corporations or
8 Partnerships that employed individuals mentioned in the paragraphs above, such as to
9 make these John Doe Clinics, Corporations or Partnerships responsible, whose
10 negligence contributed to Plaintiff's injuries and damages, but whose identity is not
11 now known and who are referred to herein as Unknown John Doe Clinics,
12 Corporations or Partnerships. Plaintiff requests that these pleadings be amended to
13 reflect the true identities of these Defendants if and when they are identified.
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15 II. JURISDICTION AND VENUE

16 2.1 On July 2, 2014, Plaintiff submitted a Claim for Damage, Injury, or
17 Death Tort Claim form on all appropriate agencies (*See Exhibit 1, attached*). The VA
18 Office of Regional Counsel in Seattle, WA, received the claim form on July 9, 2014.
19 On January 2, 2015, Plaintiff received a letter from the VA Office of Regional Counsel
20 denying the Federal Tort Claim. (*See Exhibit 2, attached*). Therefore, this Court has
21 jurisdiction over the claims against the United States of America pursuant to 28 U.S.C.
22 Sec. 2675(a).
23

24 2.2 Venue in this Court is proper pursuant to 28 U.S.C. sec. 1402(b).
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III. STATEMENT OF CLAIMS

3.1 In 2003 an Occupational Medical Officer evaluated Mr. Piersawl for exposure to asbestos in the Naval Shipyard throughout his military career. It was noted that the chest x-ray showed pleural thickening and recommended continued surveillance of Mr. Piersawls lungs.

3.2 Mr. Piersawl was evaluated numerous times at the VA Puget Sound Health Care System for coughing and trouble breathing beginning in 2009. Mr. Piersawl underwent several courses of antibiotics which did not resolve his coughing.

3.3 Mr. Piersawl continued to seek treatment at the VA Puget Sound Health Care System from 2009 – 2012, including instances where he would cough for such prolonged periods that he would vomit. Mr. Piersawl even sought treatment at the VA Emergency Department for his coughing.

3.4 Multiple bronchoscopies of Mr. Piersawl were obtained from 2010 – 2012. These bronchoscopes were improperly sterilized by the Sterile Processing Department in the AER machine at the Seattle VA Hospital.

3.5 The Sterile Processing Department at the Seattle VA Hospital disregarded manufacturer's instructions regarding proper usage of the AER machines leaving bronchoscopes dirty after supposed sterilization. These bronchoscopes were used on Mr. Piersawl, contributing to his already fragile lung condition and worsening Mr. Piersawl's pneumonia complications.

3.6 A CT of Mr. Piersawl's lungs was not obtained until February of 2012, which revealed an unresectable Stage III tumor in his lungs.

1 3.7 Mr. Piersawl died February 26, 2013, as a result of his lung cancer and
2 pneumonia.

3 **IV. CLAIMS AGAINST THE UNITED STATES OF AMERICA**

4 4.1 As alleged above, the VA Puget Sound Health Care System and its
5 employees are employees of the Government pursuant to 28 U.S.C. Sec. 2671.
6
7 Therefore, the proper defendant in this matter is the United States of America.

8 4.2 Medical Negligence. Defendant United States of America, by and
9 through its employees and agents, VA Puget Sound Health Care System, failed to
10 exercise the degree of care, skill and learning expected of reasonably prudent health care
11 providers in the same profession or class in the State of Washington acting in the same
12 or similar circumstances. Failure to exercise reasonable care includes, but is not limited
13 to, proper sterilization procedures in the sterile processing department, use of sterile
14 equipment, infection prevention protocols and timely ordering of diagnostic scan and
15 proper follow-up care. Such conduct proximately caused severe injuries and damage to
16 plaintiff. Such conduct establishes claims under RCW 4.24, RCW 7.70 and other
17 applicable law.
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19 4.3 Negligence. The VA Puget Sound Health Care system failed to exercise
20 the degree of care, skill and learning expected of reasonably prudent health care
21 providers in the same profession or class in the State of Washington acting in the same
22 or similar circumstances. If the actions of defendant fall outside of these parameters,
23 negligence has occurred.
24

25 4.4 Informed Consent. Defendant United States of America, by and
26 through VA Puget Sound Health Care System and its employees, breached its duty to

1 inform plaintiff of all material facts, including risks and alternatives, which a
2 reasonably prudent patient would need to make an informed decision on whether to
3 consent to or reject proposed courses of treatment. This conduct proximately caused
4 injury to plaintiff.

5
6 4.5 Corporate Negligence. Defendant United States is liable under the
7 doctrine of corporate negligence, WPI 105.02.02. Defendant Hospital owes an
8 independent duty of care to its patients and has a duty to exercise the degree of skill,
9 care, and learning expected of a reasonably prudent hospital. Defendant is responsible
10 for all acts and omissions of its employees, agents, independent contractors and is
11 responsible for adequate supervision of its staff members. Defendant United States of
12 America is further responsible for implementing policies and procedures to ensure
13 proper staffing and credentialing. The appropriate standard of care for a patient with
14 persistent cough that is not resolved by antibiotics is to perform a CT scan. Defendant
15 failed to reasonably order diagnostic testing on someone with asbestos exposure who
16 was on lung surveillance protocol with prolonged symptoms of unresolved coughing.
17 A CT was not obtained until February of 2012, over two years after Mr. Piersawl first
18 began complaining of his cough symptoms. Further, Defendant is liable for standard
19 operating procedures in the sterile processing department at the Seattle VA that
20 contradict manufacturers recommendations on proper sterilization of bronchoscope
21 equipment in the AER machine. Bronchoscopes that are improperly sterilized were
22 used on Mr. Piersawl increasing his exposure to chemicals and bacteria further
23 damaging Mr. Piersawl's already fragile lungs.
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V. PROXIMATE CAUSE

5.1 The conduct of defendants herein was the proximate cause of plaintiff's injuries and damages as outlined below.

VI. INJURIES AND DAMAGES

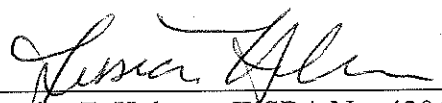
6.1 The acts and omissions of Defendants directly and proximately caused plaintiff to suffer death following severe and permanent injury, both mental and physical, pain and suffering, mental anguish, disability, and other elements of damages as allowed by law.

6.2 Plaintiff incurred out-of-pocket expenses, including but not limited to medical expenses, income loss, and other expenses in an amount that will be proven at trial.

WHEREFORE, having set forth their complaints, Plaintiff requests that the Court enter judgment against Defendants, jointly and severally, for all injuries and damages sustained by the Plaintiff in the amounts to be proven in trial, together with their reasonable costs and fees incurred herein, and such further relief as justice requires.

DATED this 2nd day of February, 2015.

HOLMAN LAW, PLLC



Jessica F. Holman, WSBA No. 43065
Attorney for Plaintiff